

**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

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**2011-1009**

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**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

DEC 22 2010

JAN HORBALY  
CLERK

SOVERAIN SOFTWARE LLC,

Plaintiff-Appellee,

v.

NEWEGG INC.,

Defendant-Appellant.

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Appeal from the United States District Court for the Eastern  
District of Texas in Case No. 07-CV-05111, Judge Leonard Davis.

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**Soverain Software LLC Reply In Support  
Of Its Motion For Extension Of Time Or Stay Of Appeal**

Soverain's Motion for Extension of Time or Alternatively to Stay the Appeal should be granted so that Soverain is not prejudiced by losing its counsel Jones Day.<sup>1</sup> Without any support Jones Day wrongfully alleges that it is not being paid for legal services and that going forward it "should not be required to continue working for free." (Jones Day Memo. at 1, 3.) Soverain has paid Jones Day

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<sup>1</sup> For the reasons set forth in Soverain's Opposition to Jones Day's Motion to Withdraw as its Counsel, this Court should deny Jones Day's request.

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millions of dollars pursuant to their Engagement Letter for this litigation and has never taken the position Jones Day must defend Newegg's appeal for free. The Engagement Letter determines the agreed upon fees through appeal. The parties now disagree on how the Engagement Letter should be applied and through the dispute resolution process, a determination will ultimately be made of the circumstances under which Soverain is required to make additional payments to Jones Day, and the amount of any additional payments.

The Engagement Letter requires the attorney fee dispute go to mediation and arbitration, if necessary. Jones Day's request for leave to withdraw asks this Court to rule on whether Soverain breached the Engagement Letter which is the very subject of dispute resolution. Soverain has offered to place fees in escrow for Jones Day's appellate services until the fee issues are resolved.

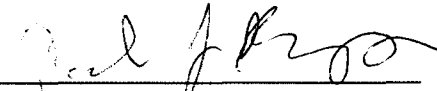
A stay of the appeal until the dispute resolution process is complete will resolve this matter entirely and eliminate any claim of prejudice to either Jones Day or Soverain. If Jones Day prevails in the dispute resolution, Soverain will need to pay additional attorney fees and Jones Day has no basis to withdraw. If Soverain prevails, no breach of the agreement occurred and Jones Day has no basis to withdraw. Regardless of the outcome of the dispute resolution Jones Day will remain in the case to handle the appeal without prejudice since they will be compensated pursuant to the terms of the Engagement Letter.

This is the correct and proper result because Jones Day is intimately familiar with the facts. Due to the complexity and size of the case, Jones Day found it necessary to have 14 of their attorneys file appearances in the District Court to handle the trial. Without a stay or extension of time Soverain will be severely prejudiced by paying another firm to learn what Jones Day already knows. Further, Jones Day's request asks this Court to conclude, under Rule 1.15(b), that Soverain has breached the agreement. (See JD Opp. at 5 [“[t]he only issue under Texas Rule 1.15(b)(5) is that Soverain has failed to fulfill its obligations to Jones Day.”]) Jones Day's request thus effectively nullifies Soverain's contractual right to arbitrate a dispute under the Engagement Letter.

Finally, as a small business with few employees, Soverain will suffer further injustice by having its manpower diverted and consumed educating a new law firm. Therefore, Soverain requests this Court grant its Motion for Extension of Time or Alternatively a Stay until the dispute resolution is resolved.

Dated: December 21, 2010

Respectfully submitted,

By:   
*Counsel for Plaintiff-Appellee*  
*Soverain Software LLC*

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**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

2011-1009

Soverain Software LLC,

Plaintiff-Appellee,

v.

Newegg Inc.,

Defendant-Appellant,

Appeal from the United States District Court for the Eastern District of Texas in  
Case No. 07-CV-0511, Judge Leonard Davis.

**CERTIFICATE OF INTEREST**

In compliance with Federal Circuit Rules 27(a)(7) and 47.4(b), the undersigned  
counsel for Plaintiff-Appellee Soverain Software LLC, certifies the following:

1. The full name and every party or amicus represented by me is:  
SOVERAIN SOFTWARE LLC.
2. The name of the real party in interest (if the party named in the  
caption is not the real party in interest) represented by me is: NONE.
3. All parent corporations and any publicly held companies that own 10  
percent or more of the stock of the party or amicus curiae represented by me are:  
NONE.

Soverain Software v. Newegg, 2011-1009

**CERTIFICATE OF INTEREST (Continued)**

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

**Jones Day:** Kenneth R. Adamo, Thomas Demitrack, Thomas L. Giannetti, Mark C. Howland, George T. Manning, Barry R. Satine, Jennifer Seraphine, Ognian V. Shentov, Andrey Belenky, Kenneth Canfield, Clark Craddock, Lynda Q. Nguyen, Debra R. Smith, Stela C. Tipi.

**The Roth Law Firm:** Carl R. Roth, Amanda Aline Abraham;

**Siebman Burg Phillips & Smith:** Michael C. Smith

**Williams Montgomery & John:** Peter C. John, Eric R. Lifvendahl, Paul J. Ripp

12-21-2010

Date

Paul J. Ripp

Signature of Counsel

Paul J. Ripp

Printed Name of Counsel

Soverain Software v. Newegg, 2011-1009

**CERTIFICATE OF FILING AND SERVICE**

I, Paul J. Ripp, hereby certify that on the 21st Day of December, 2010, I caused the following documents:

1. **Soverain Software LLC Reply In Support of Its Motion For An Extension Of Time Or Stay of Appeal**
2. **Certificate of Interest**

to be served as follows:

One copy by facsimile and the original and four copies by overnight mail (and a pre-paid return envelope) to:

**Clerk of Court**

United States Court of Appeals for the Federal Circuit  
717 Madison Place, NW  
Washington, DC 20439  
202 275-9678 (fax)

One copy by facsimile and one copy by overnight mail to the persons on the attached service list at the facsimile numbers and addresses on the attached service list.



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Paul J. Ripp (*Of Counsel* for Soverain Software LLC)  
Williams Montgomery & John LLC  
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**Service List:**

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December 21, 2010

**VIA OVERNIGHT MAIL**

Mr. Jan Horbaly  
Clerk of Court  
United States Court of Appeals for the Federal Circuit  
717 Washington Place, N.W., Room 401  
Washington D. C. 20439

**RECEIVED**

12-21-2010  
United States Court of Appeals  
For The Federal Circuit

Re: ***Soverain Software, LLC v. Newegg Inc.***, Case No. 2011-1009  
Appeal from the United States District Court for the Eastern District of Texas  
in Case No. 07-CV-0511, Judge Leonard Davis

Dear Mr. Horbaly:

Please find enclosed the original and three copies of the Soverain Software LLC Reply In Support of Motion for Extension of Time Or Stay of Appeal for filing in the above captioned case. A copy of the original was also transmitted to the Federal Circuit Court of Appeals, by facsimile to 202-275-9678, on December 21, 2010, pursuant to Federal Circuit Rule 25.

This overnight filing includes an extra copy of Soverain's Reply. Please mark this copy received and filed, and return it in the self addressed return envelope provided.

Very truly yours,

WILLIAMS MONTGOMERY & JOHN

  
By: Paul J. Ripp

Enclosure

cc: Counsel of record (listed on certificate of service)

DocID#928297